

Panaji, 26th October, 1989 (Kartika 4, 1911)

SERIES II No. 30

OFFICIAL GAZETTE

GOVERNMENT OF GOA

GOVERNMENT OF GOA

General Administration and Coordination Department

Notification

No. 2-1-88/GA & C

In continuation of Government Notification of even number dated 24th April, 1989, Government is also pleased to declare 13th October, 1989 (Friday) as Public Holiday for Banks under explanation to Section 25 of the Negotiable Instruments Act, 1881 (Act 26 of 1881).

By order and in the name of the Governor of Goa.

A. V. Pimenta, Under Secretary (G. A.).

Panaji, 12th October, 1989.

Order

No. 21/8/89/EDN

Shri Ravindranath Mishra is hereby temporarily appointed on ad hoc basis as Lecturer in Hindi in Government College of Arts, Science & Commerce, Sanquelim under Directorate of Education, Panaji with effect from 17-8-89 (B.N.) in the scale of Rs. 2200-4000/- plus the usual allowances admissible from time to time with the initial pay of Rs. 2200/- p.m.

The appointment is subject to the condition specified in the Office Memorandum No. 21/Misc/2616/EDN dated 26-6-89 and the Rules and Regulation laid down by the Government from time to time.

The appointment is for a period of one year purely on ad hoc basis and it will not bestow on the appointee any claim for regular appointment promotion to the higher post and seniority and will be liable to be terminated by one month's salary in lieu of notice.

The appointment is liable for termination in case the character and antecedents of the appointee are adverse so as to disqualify him from the holding of a post under Government.

By order and in the name of the Governor of Goa.

A. P. Panvelkar, Under Secretary (Education).

Panaji, 19th September, 1989.

Revenue Department

Notification

No. 22/30/89-RD

Whereas by Government Notification No. 22/30/89-RD dated 21-2-89 published on page 584 of Series II, No. 48 of the Official Gazette dated 2-3-89 and in two newspapers (i) Navhind Times dated 2-3-89 and (ii) Gomantak dated 1-3-89 it was notified under section 4 of the Land Acquisition

Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land) was likely to be needed for public purpose, viz. Land Acquisition for construction of Court building at Nagorcem-Xelere in Canacona Taluka.

And whereas, the Government of Goa being of the opinion that the acquisition of the said land is urgently necessary, hereby applies the provisions of sub-section (1) and sub-section (4) of section 17 of the said Act and directs that the Collector appointed under paragraph 2 below, shall at any time, on the expiry of fifteen days from the date of the publication of the notice relating to the said land under sub-section (1) of section 9 of the said Act, take possession of the said land.

Now, therefore, the Government of Goa hereby declares under the provisions of section 6 of the said Act, that the said land is required for the public purpose specified above.

2. The Government also hereby appoints under clause (c) of section 3 of the said Act, the Deputy Collector (LA) Collectorate of South Goa, Margao to perform the functions of the Collector, South Goa District, Margao, for all proceedings hereinafter to be taken in respect of the said land and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Deputy Collector (LA) Collectorate of South Goa, Margao, till the award is made under section 11.

SCHEDULE

(Description of the said land)

Taluka: Canacona

Village: Nagorcem-Palolem

Survey No. Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3

222 part Comunidade of Nagorcem-Palolem. 3000.00

Boundaries:

North: S. No. 22.

South: — do —

East: — do —

West: — do —

Total 3000.00

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 1st September, 1989.

Notification

No. 22/173/87-RD

Whereas by Government Notification No. 22/173/87-RD dated 15-2-88 published on page 575 of Series II, No. 47 of

the Official Gazette, dated 3-3-88 and in two newspapers (i) Navhind Times dated 25-2-88 (2) Gomantak dated 1-3-88 it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land, specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for improvement and Black topping of Sonarwada-Colleandonger road in V. P. Raia (addl. area).

And Whereas, the Government of Goa (hereinafter referred to as "the Government"), after considering the report made under sub-section (2) of section 5A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to "the said land").

Now, Therefore, the Government hereby declares, under section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also appoints, under clause (c) of section 3 of the said Act, the Deputy Collector & S.D.O. Mormugao, Vasco-da-Gama, to perform the functions of Collector, South Goa District, Margao, for all proceedings hereinafter to be taken in respect of the said land and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said Deputy Collector S.D.O. Mormugao, Vasco-da-Gama, till the award is made under section 11.

SCHEDULE

(Description of the said land)

Tahuka: Salcete

Village: Raia

Survey No. Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3
23/9 part	Mrs. Telma D'Souza.	160.00
Boundaries:		
North: S. No. 23/9.		
South: Road.		
East: 22/40.		
West: S. No. 20/2.		
Total		160.00

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 25th September, 1989.

Corrigendum

No. 22/16/89-RD

Read: — Notification No. 22/16/89-RD dated 2-1-89 published in the Official Gazette dated 9-3-89, Series II, No. 49 and in two News Papers (1) Gomantak dated 15-2-89 and Navhind Times dated 6-3-89.

The name of the acquiring Department "The Executive Engineer, Works Division XIII Panaji" appearing in para 5, Serial No. 3 of the above notification may be read as "The Executive Engineer, Works Division VII, Irrigation Department, Xelpem-Mapusa".

So also the "Deputy Collector (LA), Collectorate, North Goa District Panaji", appearing in the above Notification, may be read as "Special Land Acquisition Officer, Irrigation Department, Duler, Mapusa".

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 18th October, 1989.

Department of Labour

Order

No. 28/21/85-LAB

The following Award given by Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 20th September, 1989.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/22/85

Shri Datta Nani Naik

— Workman/Party I

V/s

M/s Sancoale Chicalim Service Co-operative Society Limited

— Employer/Party II

Workman represented by Shri B. G. Kamat.

Employer represented by P. K. Lele.

Panaji, Dated: 11-8-1989

AWARD

This is a reference made by the Govt. of Goa, by its order No. 28/21/85-ILD dated May 2, 1985 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s Sancoale Chicalim Service Co-operative Society Limited in terminating the services of Shri Datta Nani Naik, Weighman w.e.f. 26-6-84 is legal and justified?

If not, to what relief the workman is entitled to?"

A cursory look at the Government reference would show that the main point involved in this reference is as regards the legality or otherwise of the action of the Sancoale Chicalim Service Co-operative Society (hereinafter referred to as the 'Society') in terminating the services of the "Weighman" Datta Nani Naik who was also serving as a "Salesman" in the fair price shop of the Society. In the claim statement filed on behalf of the workman Datta Naik it is stated that the workman joined the service of the Society in 1968 and he was so serving in the fair price shop of the Society till June, 1984, the month in which his services were terminated by a letter dated 26-6-84. The workman stated to be serving as a Salesman was then drawing a salary of Rs. 235/- p.m. Before terminating the services of the Salesman the Society had issued a show cause notice dated 18th April, 1983 alleging that on the earlier day viz. 17th April, 1983 the workman misbehaved with the members of the Managing Committee on finding that another person was appointed overtly to assist the Salesman but the Salesman felt that it was covertly a design to put an observer over his head and to remove him from service in a phased manner. Along with the charge of indecent behaviour it was alleged that the workman was issuing commodities to the customers in excess by 40 grams which caused heavy loss to the fair price shop, for which a panchanama was drawn. On the two points three charges were levelled against the workman namely refusal of a reasonable order of superiors, misbehaviour and wilful shortages causing damage to the Society. The workman gave his reply to the show cause notice on 20th April, 1983 denying the allegations. Thereafter an Officer from the Co-operative Department by name Anil Dessai was appointed as I.O. who conducted the enquiry in which the workman refused to participate on the alleged ground that the I.O. did not permit him to bring his legal advisor for his help in the proposed enquiry. In the absence of the workman the enquiry was held ex-parte and as many as 8 witnesses were examined and the I.O. obviously recorded a finding against the workman and acting on that, the management terminated his services as stated above and the workman had taken serious exceptions to the way and manner in which the enquiry proceedings were conducted and the management terminated his services. The management in their Written Statement

dated 24th June, 1985 have refuted the charges levelled in the claim statement maintaining that a proper enquiry was conducted in respect of the charges levelled against the workman and proper evidence was led to prove the charges. They justify their action which is based on the finding of an independent Inquiry Officer who had followed proper procedure. To this the workman filed his rejoinder dated 10th July, 1985 and the management filed their rejoinder dated 10-7-85. The sum and substance of all the pleadings was whether the enquiry conducted against the workman was fair and proper and whether the principles of natural justice were violated.

With these pleadings my Predecessor framed a preliminary issue on 2-9-85 wherein it is to be decided whether the enquiry held by the employer is fair and proper with due compliance with the principles of natural justice and this issue is being treated as the preliminary issue and the matter is being heard on the preliminary issue only.

In support of its contention the Society has examined the I. O. by name Anil Dessai who was working as an Jr. Auditor in the office of the Asstt. Registrar of Co-operative Society at Margao. He accepted the responsibility of conducting the enquiry into the matter and he proceeded with the same. He found that the workman had made a grievance about the order of suspension issued against him and had made an application to the Director of Co-op. Society. He fixed the date on 10-1-84 and perused the papers. There after he issued notice to the workman asking him to appear on 6-3-84. The workman did not appear. He issued another notice asking him to appear on 28-4-84. The workman appeared and asked for adjournment which was granted and the enquiry was adj. to 26-5-84. On 26-5-84 the workman did not appear before him and he made a panchanama about the absence of the workman and proceeded with ex-parte enquiry wherein 8 witnesses were examined and he filed his report Exb. E-1 (colly) holding all the 3 charges as duly proved against the workman and by his report dated nil, but submitted in May, 1984 stated that the continuation in service of the employee will result in mal-functioning of the Society. He therefore recommended removal of the workman from the Society. In his cross examination he admits that he refused the workman to bring his representative for the enquiry. While admitting that such a permissinn was refused he added a rider to this stating that he first wanted the workman to appear before him and this was what stated by him in his letter dated 14th May, 1984. Hence it is a common ground that the permission to appear through a representative was refused by the I. O. the reason for doing so not being on record. He then states that his findings were based on the oral evidence that they led before him and the documents produced before him. As scrutiny of the enquiry papers Exb. E-1 shows that no original documents are produced by the Society and whatever documents are produced such as show cause notice, panchanama are the true copies of the documents. Hence his statement that the documents were produced before him is not correct and he accepted the copies as the documents in the case papers and the Advocate for the workman has taken strong exception to this. Be it noted here pertinently that in this preliminary hearing as regards the legality or otherwise of the enquiry the only evidence is that of the Inquiry Officer who is examined on oath and who has produced the enquiry papers Exb. E-1 (colly). For reasons best known to himself the workman has not entered the witness box and Shri Kamat the learned counsel for the workman has no answer to this patent absence of the workman not only in the Court but throughout the proceedings including the Domestic enquiry. The workman must come forward to state what he has to state in the matter and to show and explain the circumstances under which the alleged incident giving rise to the show cause notice took place and in the absence of any evidence on the part of the workman we have to endeavour to see whether a proper enquiry was conducted against him.

A close scrutiny of the evidence of the I. O. and the enquiry papers it is seen that the I. O. who was a Jr. Auditor in the office of the Registrar acted in a manner befitting a government servant working in the Audit and Accounts Section but did not understand the legal implications of the action taken by him. There is no wordly reason why he refused permission to the workman to be accompanied by the representative. This very action of the I. O. had made the entire episode of enquiry rather shaky because the main part of the preliminary issue is whether the principles of natural justice are followed. The workman can now claim that he was jeopardized in his defence as he was prevented from bringing his representative and he felt

that no useful purpose would be served by attending the enquiry. So in a way the workman was justified in not attending the enquiry on the appointed day and the further process of enquiry becomes a nugatory process and the whole of the enquiry is subjected to criticism. Further, considering his report containing his finding of the enquiry and recommendations which is undated but which is obviously presented in the month of May, 1984 we find that in paras. 1 to 10 he has made a summary of the happenings in the Society on 18-4-83 giving rise to the suspension of the workman and subsequent issuance of the show cause notice to the workman. He then just writes four to five lines stating that he issued the notice informing the workman that the enquiry would be held on 26-5-84 at 11.00 a. m. and as the applicant did not appear the enquiry proceeded ex-parte. After giving this information he states that on going to the record (it should be through the record) he found the charges framed against the employee were justified and therefore continuation of service of such employee would result in malfunctioning of the Society. He therefore recommended his removal from service. This is how I find that he has summarised the charges in paras 1 to 10 and then in the last concluding para. He held that the charges were justified and he recommended the removal from service. It is apparently clear that the I.O. did not understand that the proceedings held before him was a quasi-judicial enquiry. While giving proper opportunity to the workman to defend himself it was also his duty to hold a thorough scrutiny of the evidence on record as to see whether the charges were provable against the workman even if the workman is absent. He did not even try to understand as to why and how the workman acted in the manner alleged against him on the day on which the members of the Managing Committee had visited the fair price shop. The workman it seems was infuriated because he had put up a service of over 14 years and another person was imposed on him and on this count he had challenged the action of the members of the Managing Committee attributing malafide. The second point as regards the manner of weighing and giving commodities more to the customers i.e. 40 grams each the dispute was regarding the measure in which the commodity is put and the weight of the measure is also to be considered and at the time of weighing it appears that the management felt that the measuring pot was thin but the workman held it to be thick and thereby a point which requires detailed consideration and nothing of the advantage of 40 grams went to the customers. This is that sort was done during the enquiry. This is how the way and manner in which the enquiry was conducted has become doubtful and it is more doubtful whether the principles of natural justice were followed or not. Shri Lele for the Society who was alive to this situation did submit before me that in the event of the enquiry not being held proper the management be permitted to lead their evidence in this court and the management would prove their charge by leading proper evidence. Shri Kamat for the workman did not want this process to be done and he was alive to the position that his workman had not evinced any interest in the proceedings and he had remained absent and had not examined himself on oath. Shri Kamat did feel that this was a serious lacuna in the case of the workman. Hence as via media he did submit before me that the workman was no more interested in the service. It is on record that the workman is running in the age of 65 and his major sons at the time of altercation with the members of the Managing Committee had openly stated that their father was no more interested in the service and they expressed that they had nothing to urge in the matter regarding the action taken against their father. This is how we are here considering the position of a workman who is very old and who is no more interested in the service and as put up by Shri Kamat on his behalf he would be interested in whatever compensation this Tribunal awards to him in the event of the enquiry being held as not just and proper. Hence, I am confining my discussions to this latest development and I shall consider the legal provision with reference to this.

To cut the matter short I propose to use my discretion by invoking Sec. 11-A of the Industrial Disputes Act. Under that new provision wide discretionary powers are given to the Tribunal and Labour Court to act in appropriate cases if the Tribunal is satisfied that the order of dismissal was not justified. The Tribunal by its award can set aside the order to give relief to the workman including lesser punishment and damages in lieu of reinstatement. While doing so, the Tribunal shall rely on the materials only on record and shall not take any fresh evidence in relation to the matter. In the instant case, the management who knew that the findings of the Inquiry Officer are not sustainable wanted to lead fresh evidence before this Tribunal to justify its

order of termination passed due to the mis-conduct of the workman. So as a matter of course the management would be entitled to lead their evidence in the event of the Domestic enquiry and the finding being set aside. However, for the workman who has not entered the witness box no such facility was needed and the workman is stated to be satisfied if some compensation be awarded to him. The The Supreme Court have clearly laid down on such point that award of compensation would be the best and proper remedy for a delinquent workman of this type. So I propose to award compensation on the line of retrenchment compensation awarded u/s 25F of the Act. In the instant case, the workman who joined the services in 1968 was terminated from services in 1984, when his salary was Rs. 235/- p.m. For the purpose of proper calculation, I take his salary as Rs. 250/- p.m. and for every year's service he would be entitled to compensation for 15 days which comes to Rs. 125/- per year and the total for 16 years comes to Rs. 2,000/-. For notice pay he is entitled to Rs. 250/- and for the past period from 1984 onwards I award him Rs. 750/- and the damages awarded to him comes to Rs. 3,000/- (Rupees three thousand only). I feel that this is just and proper compensation to be awarded to the workman in the circumstances of the case. Hence even though I set aside the findings of the Domestic Enquiry I do not propose to direct the reinstatement of the workman into services but I feel that ends of justice would be sufficiently met with if the compensation as stated above would be awarded to him. In the result, I pass the following order:

ORDER

The order of termination based on the findings of the Inquiry Officer is held to be not just and proper and the termination is treated as retrenchment but where compensation was not paid. The management of Party II/M/s. Sancoale Chicalim Services Co-operative Society Limited, Cortalim, Goa, is directed to pay an amount of Rs. 3,000/- (Rupees three thousand only) to the workman, Datta Noni Naik, as retrenchment compensation in total liquidation of his claim on the ground of wrongful termination from services.

Upon such payment being made the workman shall not be entitled to claim anything from the Society and he is not entitled to any other relief in this Government reference in the circumstances of the case.

In the circumstances of the case, parties are directed to bear their own costs.

Inform the Government accordingly about the passing of the award.

S. V. Nevagi,
Presiding Officer
Industrial Tribunal

Panaji, 11th August, 1989.

Finance (Revenue and Control) Department

Notification

No. 2-14--89-Fin (R&C)

Read:- Government Order No. 6/3/81-PER (Vol. V) dated 21st July, 1989.

In exercise of the powers conferred by Sub-Section (2) of Section 3 of the Goa, Daman and Diu Excise Duty Act, 1964 (Act No. 5 of 1964) (hereinafter called the 'said Act'), the Government of Goa, hereby appoints Shri S. V. Bhadri as Assistant Commissioner of Excise for carrying out the purpose of the said Act with effect from 1-8-1989 (F.N.), until further orders.

By order and in the name of the Governor of Goa.

K. M. Nambiar, Under Secretary (Fin. Exp.).

Panaji, 4th October, 1989.